

BEFORE THE SHORELINES HEARINGS BOARD
OF THE STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY)
PACIFIC COUNTY TO SURFSIDE)
ESTATES)
STATE OF WASHINGTON, DEPARTMENT)
OF ECOLOGY AND SLADE GORTON,)
ATTORNEY GENERAL,)
Appellants.)

SHB No. 55

STIPULATION AND ORDER
OF REMAND

It is hereby stipulated and agreed between the appellants represented by Robert Jensen, Assistant Attorney General; Surfside Estates represented by James B. Finlay; and Pacific County represented by Anton J. Miller, Prosecuting Attorney, that the substantial development permit issued by Pacific County to Surfside Estates be vacated and the matter be remanded to the county for reconsideration of the matter after conformance with the requirements of Chapter 43.21C RCW.

DATED this 21st day of September, 1973.

SLADE GORTON, ATTORNEY GENERAL

Robert Jensen
Assistant Attorney General
Temple of Justice

Olympia Wa 753-2358

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Robert Jensen

ROBERT JENSEN
Assistant Attorney General
Attorney for Appellants

James B. Finlay

JAMES B. FINLAY
Attorney for permittee

Anton J. Miller

ANTON J. MILLER
Prosecuting Attorney for
Pacific County

ORDER

This matter having come before the Shorelines Hearings Board upon the foregoing stipulation, the Board having considered the records and files herein, now therefore,

The Board hereby adopts the foregoing stipulation as its own.

DATED this 26th day of September, 1973.

Walt Woodward

WALT WOODWARD, Chairman
Shorelines Hearings Board

William A. Gissberg

WILLIAM A. GISSBERG, Member

Ralph Desnick

RALPH DESNICK, Member

ROBERT HINTZ, Member

TRACY OWEN, Member

Mary Ellen McCaffree

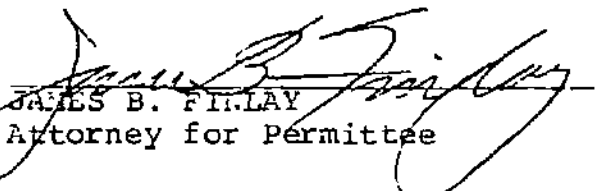
MARY ELLEN McCAFFREE, Member


Presented by:

Robert Jensen
Assistant Attorney General
Attorney for Appellants

STIPULATION AND ORDER OF REMAND

1 Approved as to form and
2 Notice of Presentation
3 Waived:

4 
5 JAMES B. FINLAY
6 Attorney for Permittee

7 
8 ANTON J. MILLER
9 Prosecuting Attorney for
10 Pacific County
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BEFORE THE SHORELINES HEARINGS BOARD
OF THE STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
THE CITY OF OLYMPIA TO
BUCHANAN LUMBER COMPANY,

CHARLES E. WOOLKE, and STATE
OF WASHINGTON DEPARTMENT OF
ECOLOGY and SLADE GORTON,
ATTORNEY GENERAL,

Appellants,

v.

CITY OF OLYMPIA and
BUCHANAN LUMBER COMPANY,

Respondents.

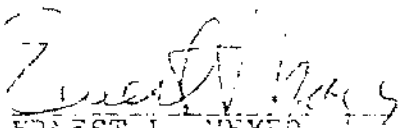
SHS Nos. 56 and 56-B

STIPULATION AND ORDER

The parties hereto, by and through their legal representatives,
stipulate that the subjoined Order may be entered by the Board,
approve said Order as to form and waive notice of presentation
thereof.

DATED this 21st day of August 1973.

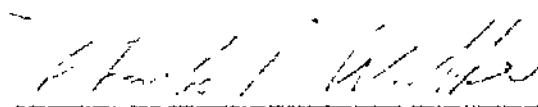
SLADE GORTON, ATTORNEY GENERAL
Nick Dufford
Assistant Attorney General
Temple of Justice



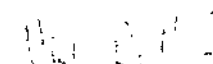
ERNEST L. MEYER
Attorney for City of Olympia



JOHN S. LYNCH
Attorney for Buchanan Lumber Company



CHARLES E. WOELKE
Pro se



WICK DUFFORD
Assistant. for Attorney General
and Department of Ecology,
State of Washington

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ORDLR

This matter having come before the Shorelines Hearings Board upon the agreement of the parties that the following be entered,

NOW THEREFORE, it is ORDERED that:

1. The substantial development permit, dated March 2, 1973, which was approved by the City of Olympia on February 20, 1973, and issued thereby to Buchanan Lumber Company is void and of no effect.

2. The consolidated proceedings in SHS Nos. 56 and 56-B are dismissed.

3. The City of Olympia may reconsider Application No. SH-OLY 4-72 of Buchanan Lumber Company for a substantial development permit and act on such application after holding another public hearing thereon upon reasonable notice.

4. Any decision hereafter made by the City of Olympia on Application No. SH-OLY 4-72 shall be subject to appeal; except that it shall be no ground for appeal of a decision made pursuant to the procedure of paragraph 3 above for any party to assert the invalidity of such procedure or that the decision was had without requiring the filing of a new application.

DATED this 22nd day of August, 1973.

1 Helt Woodward
2 HOLT WOODWARD, Chairman

3 William A. Gissberg
4 WILLIAM A. GISSBERG, Member

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8 Bert Cole
9 BERT COLE, Member

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12 ROBERT F. HINTZ, Member

13 Tracy J. Owen
14 TRACY J. OWEN, Member

BEFORE THE SHORELINES HEARINGS BOARD
OF THE STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
THE CITY OF OLYMPIA TO
BUCHANAN LUMBER COMPANY,

CHARLES E. WOELKE, and STATE
OF WASHINGTON, DEPARTMENT OF
ECOLOGY and SLADE GORTON,
ATTORNEY GENERAL,

Appellants,

v.

CITY OF OLYMPIA and
BUCHANAN LUMBER COMPANY,

Respondents.

SHS Nos. 56 and 56-B

STIPULATION AND ORDER

The parties hereto, by and through their legal representatives,
stipulate that the subjoined Order may be entered by the Board,
approve said Order as to form and waive notice of presentation
thereof.

DATED this 21st day of August 1973.

SLADE GORTON, ATTORNEY GENERAL
W. L. Dufford
Assistant Attorney General
Temple of Justice

Ernest L. Meyer
ERNEST L. MEYER
Attorney for City of Olympia

John S. Lynch
JOHN S. LYNCH
Attorney for Buchanan Lumber Company

Charles E. Foelke
CHARLES E. FOELKE
Pro se

Wick Dufford
WICK DUFFORD
Assistant for Attorney General
and Department of Ecology,
State of Washington

ORDER

This matter having come before the Shorelines hearings Board upon the agreement of the parties that the following be entered,

NOW THEREFORE, it is ORDERED that.

1. The substantial development permit, dated March 2, 1973, which was approved by the City of Olympia on February 20, 1973, and issued thereby to Buchanan Lumber Company is void and of no effect.

2. The consolidated proceedings in SHB Nos. 56 and 56-B are dismissed.

3. The City of Olympia may reconsider Application No. SH-OLY 4-72 of Buchanan Lumber Company for a substantial development permit and act on such application after holding another public hearing thereon upon reasonable notice.

4. Any decision hereafter made by the City of Olympia on Application No. SH-OLY 4-72 shall be subject to appeal; except that it shall be no ground for appeal of a decision made pursuant to the procedure of paragraph 3 above for any party to assert the invalidity of such procedure or that the decision was had without requiring the filing of a new application.

DATED this 22nd day of August, 1973.

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Walt Woodward
WALT WOODWARD, Chairman

William A. Gissberg
WILLIAM A. GISSBERG, Member

Bert Cole
BERT COLE, Member

ROBERT F. HINZ, Member

Tracy J. Owen
TRACY J. OWEN, Member

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY)
CITY OF OLYMPIA TO BUCHANAN)
LUMBER COMPANY,)
THURSTON ACTION COMMITTEE,)
Appellant,)
vs.)
CITY OF OLYMPIA,)
Respondent.)

SHB No. 56-A

ORDER DISMISSING
REQUEST FOR REVIEW

It appearing to the Shorelines Hearings Board that the time within which the above-captioned and numbered Request for Review could be certified by the Department of Ecology and or the Attorney General (RCW 90.58.180) has expired, and that there has been no certification, and that the Request for Review should therefore be dismissed and the file closed. NOW THEREFORE,

IT IS HEREBY ORDERED that the above-captioned and numbered Request

1 for Review be, and the same hereby is dismissed with prejudice.

2 DONE at Lacey, Washington this 22nd day of August, 1973.

3 SHORELINES HEARINGS BOARD

4 Walt Woodward
5 WALT WOODWARD, Chairman

6 W. A. Gissberg
7 W. A. GISSBERG, Member

8 Ralph A. Beswick
9 RALPH A. BESWICK, Member

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11 ROBERT F. HINTZ, Member

12 Tracy J. Owen
13 TRACY J. OWEN, Member

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27 ORDER DISMISSING
REQUEST FOR REVIEW

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL
DEVELOPMENT PERMIT ISSUED BY
MASON COUNTY TO MARIO VINCENZI

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY and
SLADE GORTON, ATTORNEY GENERAL,

Appellants,

vs.

MASON COUNTY and
MARIO VINCENZI,

Respondents.

SHB No. 57

FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

THIS MATTER being a request for review of the granting of a
substantial development permit for the construction of a seawall and
landfill into the tidelands of Hood Canal, having come on regularly
for hearing before the Shorelines Hearings Board on the 24th day of
August, 1973, at Lacey, Washington; and appellants Department of
Ecology and Attorney General appearing through their attorney Charles

1 W. Lean and respondent Mason County appearing through its deputy
2 prosecuting attorney, Gary Burleson and respondent Mario Vincenzi
3 appearing pro se; and Board members present at the hearing being
4 W. A. Gissberg, Ralph A. Beswick, Gordon Y. Ericksen and John Pearsall;
5 and the Board having considered the sworn testimony, exhibits, records
6 and files herein and having entered on the 26th day of December, 1973,
7 its proposed Findings of Fact, Conclusions and Order; and the Board
8 having served said proposed Findings, Conclusions and Order upon all
9 parties herein by certified mail, return receipt requested and twenty
10 days having elapsed from said service; and

11 The Board having received no Exceptions to said proposed Findings,
12 Conclusions and Order; and the Board being fully advised in the premise
13 now therefore,

14 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
15 Findings of Fact, Conclusions of Law and Order, dated the 26th day of
16 December, 1973, and incorporated by this reference herein and attached
17 hereto as Exhibit A, are adopted and hereby entered as the Board's
18 Final Findings of Fact, Conclusions of Law and Order herein.

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27 FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

DONE at Lacey, Washington this 4th day of February, 1974.

SHORELINES HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

Ralph A. Beswick
RALPH A. BESWICK, Member

Gordon Y. Erickson
GORDON Y. ERICKSEN, Member

W. A. Gissberg
W. A. GISSBERG, Member

Mary Ellen McCaffree
MARY ELLEN MCCAFFREE, Member

CERTIFICATION OF MAILING

I, Dolores Osland, certify I mailed copies of the foregoing document on the 4th day of February, 1974 to each of the following parties:

Mr. Charles W. Lean
Assistant Attorney General
Department of Ecology
Olympia, Washington 98504

Mr. Gary Burleson
Deputy Prosecuting Attorney
Mason County Courthouse
4th and Alder
Shelton, Washington 98584

Mr. Mario Vincenzi
204 South 201st
Seattle, Washington 98148

FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 Mr. Bob Stevens
2 Department of Ecology
3 St. Martin's College
4 Olympia, Washington 98504

5 the foregoing being the last known post office addresses of the above-
6 named parties. I further certify that proper postage had been affixed
7 to the envelopes deposited in the U. S. mail.

8 Dolores Osland
9 DOLORIES OSLAND, Clerk
10 SHORELINES HEARINGS BOARD
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27 FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY)
MASON COUNTY TO MARIO VINCENZI)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY and)
SLADE GORTON, ATTORNEY GENERAL,)
Appellants,)
vs.)
MASON COUNTY and)
MARIO VINCENZI,)
Respondents.)

SHB No. 57

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, a review of the granting of a substantial development permit by Mason County to Mario Vincenzi, came on before the Shorelines Hearings Board before Board members W. A. Gissberg (presiding), Ralph A. Beswick, Gordon Y. Ericksen and John Pearsall on August 24, 1973 in the Board's office in Lacey, Washington.

Appellants were represented by Charles W. Lean; respondent, Mason

EXHIBIT A

1 County, by Gary Burleson, deputy prosecuting attorney; respondent, Mario
2 Vincenzi, appeared pro se.

3 Having considered the transcript of the proceedings and the exhibits,
4 including an exhibit received after the hearing pursuant to the order of
5 the presiding officer, which now has been admitted into evidence and
6 marked as respondent's Exhibit 2, and being fully advised, the Board
7 makes and enters these

8 FINDINGS OF FACT

9 I.

10 On February 5, 1973, Mason County granted to Mario Vincenzi
11 a substantial development permit. Appellants filed a timely request
12 for review of the permit on March 26, 1973.

13 II.

14 Mario Vincenzi (hereinafter respondent), the owner of Lots 15 and
15 16, Block 1 of the plat of Cothary Beach Tracts, in Mason County,
16 Washington, located eight miles west of Belfair on Hood Canal, a
17 shoreline of state-wide significance under the Shoreline Management
18 Act. The plat was approved by the Mason County Commissioners and
19 filed for record on February 24, 1947. Respondent thereafter, but prior
20 to April, 1971, purchased his property with reference to the plat. The
21 side lot lines in question extend across the meander line into the
22 tidelands and respondent owns such tidelands.

23 III.

24 One hundred feet of respondent's property fronts the waters of
25 Hood Canal on the west and the North Shore county road on the east. For
26 all practical purposes, respondent's only usable land consists of

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 approximately a ten foot wide strip of land which lays between the
2 county road and the high water line of Hood Canal. The road occupies
3 a narrow location between a hillside and Hood Canal. During periods of
4 high tides when wave action is severe, bank erosion occurs. The
5 construction of a bulkhead would protect the county road from ultimate
6 destructive wave action.

7 IV.

8 On April 6, 1970, respondent procured a building permit from
9 Mason County authorizing him to place a fill, (60 feet by 50 feet)
10 and a bulkhead on the three sides of the fill, all on the tidelands
11 of a portion of his platted lots. The fill, as proposed, would extend
12 out into the waters of Hood Canal a distance of five feet in elevation
13 below the line of mean high tide. The vertical bulkhead, as proposed,
14 extends to a plus six foot tide level.

15 V.

16 After procuring his building permit, respondent commenced
17 construction of the bulkhead preparatory to the placing of the fill
18 behind it, but work thereon was stopped by the Order of the Corps of
19 Army Engineers in late April of 1970 because respondent had not
20 received a permit from that agency. Respondent immediately thereafter
21 applied for a Corps of Army Engineers' permit but, although on
22 April 24, 1970 the Corps promulgated a public notice of respondent's
23 request therefor, none has yet been issued or denied by that federal
24 agency and its stop work order is still in effect.

25 VI.

26 The Shoreline Management Act went into effect on June 1, 1971.

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 In late 1972 respondent applied to Mason County for a shorelines
2 management substantial development permit seeking to construct his
3 fill and bulkhead so that he could utilize his property for a use, as
4 proposed by him on his shoreline management application, of "recreational,
5 summer home". From respondent's testimony at the hearing we find that
6 respondent's use of the fill is for storing his boat thereon and an
7 inhabitable "trailer".

8 VII.

9 The proposed fill and bulkhead would subject salmon fry to
10 increased predation and a lower survival rate. If filling and
11 bulkheading of the type proposed by respondent is continued in other
12 areas of Puget Sound a further decline of chums and pink salmon
13 could occur.

14 VIII.

15 No sanitary sewers are available to serve appellant's property
16 and under present Mason County standards adopted July 9, 1970, septic
17 tanks and drainfields are required to be located 50 feet from the water.
18 Thus, a septic tank and drainfield on the subject property are
19 prohibited by Mason County. However, a holding tank for sanitary
20 waste from a trailer or vehicle on respondent's property would be lawful
21 under Mason County laws and regulations.

22 Respondent's application is for a fill and bulkhead only. He
23 does not seek a substantial development permit for the construction of
24 a septic tank or other structure.

25 IX.

26 Respondent never sought nor obtained a hydraulic permit from any

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 agency of the State of Washington.

2 From which comes the following

3 CONCLUSIONS OF LAW

4 I.

5 Respondent's proposed fill and bulkhead is a substantial
6 development which is inconsistent with the policy section of the
7 Shoreline Management Act (RCW 90.58.020) and the Guidelines of the
8 Department of Ecology.

9 II.

10 Respondent was and is not required to procure any approval
11 or hydraulic permit from the Departments of Fisheries and Game pursuant
12 to RCW 75.20.100. That statute applies only to rivers and streams.

13 III.

14 Although construction was undertaken by respondent prior to
15 the effective date of the Shoreline Management Act, that construction
16 was unlawful because he had not procured a permit from the Corps of
17 Army Engineers. Therefore, WAC 173-14-050 does not exempt respondent
18 from compliance with the permit requirements of the Shoreline
19 Management Act.

20 IV.

21 RCW 90.58.140(9) provides that:

22 "No permit shall be required for any development on shorelines of
23 the state included within a preliminary or final plat approved by
24 . . . local government prior to April 1, 1971, if:
25 . . . (b) Sales of lots to purchasers with reference to the plat
26 . . . occurred prior to April 1, 1971, and
27 (c) The development to be made without a permit meets all
requirements of the . . . local government, other than require-
ments imposed pursuant to this chapter, and
(d) The development does not involve construction of

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 buildings . . . , and

2 (e) The development is completed within two years after
the effective date of this chapter." (By June 1, 1973)

3 V.

4 In determining the two year time limitation of RCW 90.58.140(9)(e),
5 that period of time after June 1, 1971 should be tolled during the
6 period from the date the construction was stopped by the Corps of
7 Army Engineers and the date of the final adjudication of this request
8 for review.

9 VI.

10 The exemption of RCW 90.58.140(9) from the permit requirements of
11 the Act applies to the facts of this request for review. Therefore,
12 Respondent is exempt from the permit requirements of the Act. The
13 plat exemption is not limited to developments which are described
14 by or appear upon the face of the plat. Rather, the exemption runs
15 to any development so long as it occurs within the physical boundaries
16 of a plat and meets the conditions of RCW 90.58.140(9)(b) and (c) and
17 (d) and (e). The legislative purpose in granting the exemption can be
18 gathered from the Senate Journal, 1971, Ex. 1971. That purpose was and
19 is to provide an exemption for any development so long as the
20 development occurs within the confines of platted property, and is
21 completed within two years. It simply provides any purchaser of any
22 lot in any ancient plat an opportunity to develop and construct on his
23 property such improvements as he may desire without any permit under
24 the Shoreline Management Act, but only if the development is completed
25 within two years from June 1, 1973.

26 From which comes this

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

ORDER

1. The request for review is sustained and the permit is vacated.

2. Respondent need not obtain a permit under the Shoreline Management Act to construct the improvements described in his permit application.

3. However, because the bulkhead, as now partially constructed, and the proposed fill are and would be in navigable waters and because RCW 90.58.270(1) is not available to appellant, other legal impediments may prohibit respondent from carrying out his proposed construction. This Board has no authority or jurisdiction over such, but rather our review authority is limited to the permit system of the Shoreline Management Act.

DONE at Lacey, Washington this 26th day of December 1973.

SHORELINES HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

Ralph A. Beswick
RALPH A. BESWICK, Member

Gordon Y. Erickson
GORDON Y. ERICKSEN, Member

W. A. Gissberg
W. A. GISSBERG, Member

Mary Edlen McCaffree
MARY EDLEN McCAFFREE, Member

John Pearsall
JOHN PEARSALL, Member

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

*Ocean Beach
bulleted & fill
new time in 1973*

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY GRAYS)
HARBOR COUNTY TO WALTER B. WELTI,)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY, and)
SLADE GORTON, ATTORNEY GENERAL,)
Appellants,)
vs.)
GRAYS HARBOR COUNTY and)
WALTER B. WELTI,)
Respondents.)

SHB No. 62-A

FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

A formal hearing on the request for review was held before the Board in Aberdeen, Washington on July 12, 1973. Respondent, Welti, was represented by James Stewart; Grays Harbor County by Marley Young, its assistant director of Department of Public Works; appellants were represented by Robert V. Jensen, assistant attorney general; with W. A. Gissberg, a member of the Board, presiding. Mr. Ralph Beswick, a second

1 Board member was also present.

2 FINDINGS OF FACT

3 I.

4 On April 18, 1973, following publication of due notice thereof,
5 Grays Harbor County granted to Walter B. Welte, a Permit for Shoreline
6 Management Substantial Development to develop recreation building sites
7 at Oceancrest Addition to Moclips, First Addition to Sunset Beach,
8 Section 17, Township 20 North, Range 12 West, W.M. That area is a
9 natural shoreline of statewide significance.

10 II.

11 Appellants filed a timely request for review of the permit with
12 this Board on June 4, 1973.

13 III.

14 The application of Mr. Welte, to which the Substantial Development
15 Permit responds, describes the proposal as a bulkhead and fill extending
16 over 1800 feet along the ocean beach and replacing a portion of the
17 upland which has been gradually eroded (an average of three feet per
18 year) since the area was platted in 1906. Width of the proposed fill
19 varies from 20 feet on the north and to 100 feet on the south end.
20 Stated use of the proposed fill is "recreation building sites."
21 Bulkheading is the only method of protecting the property from further
22 erosion. Neither the fill nor bulkheading will harm the fishery.

23 IV.

24 Grays Harbor County did on April 18, 1973 indicate, in the notice
25 of permit approval, that they had made a finding that "the proposed
26 development . . . 1) would not yield a significant environmental impact,

27 FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 and 2) would be consistant with the policy of the Shoreline Management
2 Act." The County further indicated a number of conditions would apply
3 to the development, including compliance with WAC 173-16-060(8), (11)
4 and (14).

5 V.

6 At the time of the hearing before the Board it appeared that
7 Mr. Welte, the Department of Ecology and the Attorney General had
8 concluded that the bulkhead and fill were approved by Grays Harbor
9 County essentially as proposed. However, Mr. Young, recently appointed
10 as assistant director of Department of Public Works for Grays Harbor
11 County, interprets the Permit as denying development in the manner
12 proposed, and authorizing only a protective bulkhead constructed within
13 three to five feet of the existing bank line. The green line on
14 appellants' Exhibit 6 is the line of vegetation. That Exhibit is dated
15 June 6, 1973 and was prepared by Glenn F. Sargent, a professional land
16 surveyor.

17 VI.

18 Grays Harbor County considered environmental factors in the project.
19 This is evidenced by its conclusion that the development would not yield
20 a significant environmental impact. That conclusion was based upon a
21 consideration of Welte's April 10, 1973 letter (Respondents' Exhibit 1)
22 which discussed environmental factors.

23 VII.

24 The purpose of Mr. Welte's proposed bulkheading and fill is two-
25 fold: (1) For the purpose of creating land by filling behind the
26 bulkhead, and (2) To provide protection to upland area against further

27 FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 erosion.

2 VIII.

3 The Guideline of the Department of Ecology with respect to the
4 bulkheads is found at 173-16-060(11), which in part provides:

5 ". . . (e) The construction of bulkheads should be permitted
6 only where they provide protection to upland areas or facilities,
7 not for the indirect purpose of creating land by filling behind
8 the bulkhead. . . ."

9 IX.

10 At the conclusion of the hearing, Mr. Jensen amended the Depart-
11 ment's and the Attorney General's prayers for relief by asking that the
12 Permit be affirmed with the condition that the bulkhead be constructed
13 within three to five feet of the natural bank line.

14 X.

15 On August 22, 1973 this Board issued its proposed Findings of Fact,
16 Conclusions of Law and Order. That proposed Order would have permitted
17 a protective bulkhead if constructed within five feet seaward as
18 measured from the toe of the existing bank.

19 Respondent filed exceptions to the proposed Order. The Board
20 thereafter, at a hearing ordered by it, took additional testimony from
21 the parties relating to the exceptions. As a result, the Board has made
22 additional Findings of Fact numbered X through XVII, and has revised the
23 former proposed Conclusion of Law III and the Order herein.

24 XI.

25 There are severe impacts from ocean coast surf on existing bulkheads
26 which have caused failures when such bulkheads are not adequately anchored

27 FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 XII.

2 A "tieback" extending eight feet behind a bulkhead with deadmen set
3 at a depth of seven feet is adequate to support a bulkhead built below
4 the line of mean high tide.

5 XIII.

6 Installation of tieback anchors in the form of deadmen above the
7 line of vegetation at ten foot intervals would disrupt the natural
8 appearance of the shoreline by eradicating sensitive barrier vegetation
9 which may be difficult to re-establish due to exposure to the open sea.

10 XIV.

11 To closely follow the convolutions of the bank at this site would
12 create sediment entrapment areas which may interfere with natural littoral
13 drift on the beach.

14 XV.

15 Construction of a bulkhead extending more than fifteen feet onto
16 the beach would result in a significant landfill which would exceed the
17 ordinary requirements for a protective bulkhead.

18 XVI.

19 A pile bulkhead could be built within five feet of the toe of the
20 slope at a cost of five to ten times that of alternative structures.
21 Such construction would result in destruction of the natural character
22 of shoreline vegetation.

23 XVII.

24 If the bulkhead is to be back-filled with trucked in material, a
25 minimum of fifteen feet of surface width on top of the filled bulkhead is
26 required for hauling room, whereas if the bulkhead is to be back-filled

27 FINAL FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 with beach material or by dozing down the bank, such a travel surface is
2 not required.

3 From which comes these

4 CONCLUSIONS OF LAW

5 I.

6 This Board has jurisdiction of the parties and subject matter of
7 this review.

8 II.

9 The location of the bulkhead as originally proposed by respondent,
10 Welti, violates WAC 173-16-060(11)(e) and the policy section of the
11 Shoreline Management Act. The conversion of over 1800 feet of natural
12 ocean shoreline to a bulkheaded fill, whose primary purpose is to reclaim
13 and recreate land which has slowly eroded over a long period of time,
14 would interfere with the public's opportunity to enjoy the physical and
15 esthetic qualities of a natural shoreline of state-wide significance.
16 There would be no enhancement of the public interest.

17 III.

18 Under the circumstances of this case, a substantial development permit
19 authorizing the construction of a protective bulkhead with the center line
20 thereof to be located no further seaward than ten feet from toe of the
21 bank, except at major indentations in the bank where the distance may
22 be up to fifteen feet, would be consistent with the policy of the Shoreline
23 Management Act and the guidelines of the Department of Ecology and the
24 master program, insofar as can be ascertained, if such permit was
25 further conditioned, as follows:

26 (a) At no time is there to be any disturbance of existing bank

27 FINAL FINDINGS OF FACT,
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1 vegetation, except that necessary to provide limited access to the beach.

2 (b) No structures are to be constructed on the bulkhead or the bank-
3 filled area after it is completed.

4 From which follows this

5 ORDER

6 1. The substantial development permit is remanded to Grays Harbor
7 County for reissuance of a permit authorizing the construction of a
8 protective bulkhead, the center line of which is to be located no further
9 seaward than ten feet from toe of the bank, except in major indentations
10 in the bank where the distance may be up to fifteen feet. Such permit
11 shall contain the following additional conditions:

12 (a) At no time is there to be any disturbance of existing bank
13 vegetation, except that necessary to provide limited access to the beach.

14 (b) No structures are to be constructed on the bulkhead or the bank-
15 filled area after it is completed.

16 2. In all other respects and conditions, the permit is affirmed.

17 DONE at Lacey, Washington this 19th day of April, 1974.

18 SHORELINES HEARINGS BOARD

19 Walt Woodward
20 WALT WOODWARD, Chairman

21 R. A. Beswick
22 RALPH A. BESWICK, Member

23 W. A. Gissberg
24 W. A. GISSBERG, Member

25 Robert F. Hintz
26 ROBERT F. HINTZ, Member

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

TRACY J. OWEN, Member

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL)
DEVELOPMENT PERMIT ISSUED BY)
GRAYS HARBOR COUNTY TO DINEEN)
SHAKE AND SHINGLE, INC.)

STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY and SLADE)
GORTON, ATTORNEY GENERAL,)

Appellants,)

vs.)

GRAYS HARBOR COUNTY and)
DINEEN SHAKE AND SHINGLE,)
INC.,)

Respondents.)

SHB No. 63

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

The issue before the Board in this instance is a request for review of a substantial development permit granted by Grays Harbor County on February 14, 1973 to Dineen Shake and Shingle, Inc. This matter came before the Shorelines Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree, Ralph A. Beswick, designee

EXHIBIT A

1 for Bert L. Cole, and Robert E. Beaty, representative of Association of
2 Washington Counties) at a hearing in Aberdeen, Washington at 10:00 a.m.,
3 October 26, 1973.

4 The appellants were represented by Robert V. Jensen, Assistant
5 Attorney General and the respondent corporation was represented by
6 James M. Stewart, Attorney at Law. Grays Harbor County was represented
7 by its Planning Director, Mr. Patrick Katzer. Irene Dahlgren, Olympia
8 court reporter, reported the proceedings.

9 On the basis of testimony heard, exhibits examined and arguments
10 of counsel, the Shorelines Hearings Board makes and enters the following:

11 FINDINGS OF FACT

12 I.

13 Dineen Snake and Shingle, Inc. (hereinafter referred to as the
14 respondent) is the owner of approximately 12 undeveloped acres of
15 designated wetland (WAC 173-22-010) adjacent to the East Fork of the
16 Hoquiam River in Grays Harbor County. The property is located on
17 Lot 1, of Section 25, Township 18 North, Range 10 west of the
18 Willamette meridian.

19 The only development on the site is an unoccupied house on a
20 200 square foot parcel at the southeast corner. A county road borders
21 the proposed development site on the east (the site is schematically
22 illustrated on Appellants' Exhibit 7). A tidal slough lies to the
23 north and private property under different ownership is adjacent to the
24 south; residences are located on those properties to the south and
25 east.

26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

1 II.

2 At the present time the site is predominately covered with wild
3 grasses and several species of trees. Its general appearance is that
4 of an open marsh. The area has a high water table and water ordinarily
5 stands on the site.

6 As a marsh the area is rich in wildlife including at least
7 27 varieties of birds, mammals, and reptiles (Appellants' Exhibit 2).

8 Grays Harbor County granted the respondent a substantial develop-
9 ment permit for a wood waste fill on this site on February 14, 1973.
10 No environmental impact statement (RCW 43.21C.030) was ever prepared.

11 III.

12 The Attorney General and the Department of Ecology received copies
13 of the permit on February 15 and 16, respectively. On April 2, 1973,
14 the appellants filed a request for review with the Board. During the
15 negotiations which ensued, the original plan was modified and by
16 stipulation of the parties the Board had before it the final proposal
17 as embodied in Respondent's Exhibit B, an extensive engineering report
18 dated July 21, 1973.

19 IV.

20 The Dineen Corporation plan calls for an 8 acre fill site to be
21 divided into three compartments of a maximum 3 acre size, and no more than
22 one of these compartments will be used at any one time (see Respondent's
23 Exhibit B). The landfill site is to be surrounded by a dike of imperme-
24 able clay material with a minimum width of 8 feet and a minimum height
25 equal to that of the waste material. The impermeable clay material is
26 designed to prevent the infiltration of water or exfiltration of

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 leachate. When a cell is filled with wood waste it will then be covered
2 with soil and seeded. The waste will lie upon the natural ground. The
3 soil below is intended to supplement the bacteria present in the wood
4 waste, to help to rapidly satisfy the biochemical oxygen demand if
5 leaching occurs, and to filter any escaping leachate. The bacteria in
6 the soil placed on top will also help fulfill the biological oxygen
7 demand and the cells can be sealed and sloped to prevent precipitation
8 reaching the wood waste.

9 V.

10 It is intended that the site will be used for the disposal of
11 cedar waste. The organic compounds in cedar are decomposed by aerobic
12 organisms to substances which will decompose no further. It is
13 intended that the cedar waste will be primarily decomposed aerobically.
14 However, problems can occur when water levels in the decomposing mass
15 of material reach a higher point. The respondent's engineering report
16 explains the problem as follows:

17 "WOOD WASTE SANITARY LANDFILL DESIGN

18 "As initially implaced and compacted, a landfill is moist,
19 but normally aerobic. Biological uptake of the available
20 oxygen plus additions of water, either by infiltration or
21 precipitation in excess of runoff and facilitates anaerobis
22 conditions. In decomposition reactions by an anaerobiosis,
23 gaseous end products, methane and carbon dioxide, are
24 evolved. Nearly all of the methane will be evolved as a gas
25 due to the low solubility of methane in water. Much of the
26 carbon dioxide will be given off in the gaseous state but
some will remain in solution as carbonic acid and tend to
lower the pH. As pH. lowers, some leachate may become laden
with trace metals if present in the medium. If the B.O.D.
is satisfied before the leachate enters the receiving waters
and infiltration and precipitation are kept to a minimum
the process will stay aerobic. This is the primary
consideration in my design."

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

VI.

Leachates will escape into the underlying soil to an undetermined degree.

VII.

Wildlife habitats will be adversely effected by this type of development on the site.

VIII.

Under certain conditions of wind and high tide the site will be inundated with water which will carry leachates into the river.

From these Findings, the Shorelines Hearings Board comes to these

CONCLUSIONS

I.

The substantial development permit was granted on February 14, 1973 well after August 9, 1971, the effective date of the State Environmental Policy Act (RCW 43.21C).

II.

There is no question that the issuance of a permit by Grays Harbor County on February 14, 1973 was a major act significantly affecting the quality of the environment. This substantial development permit is clearly analogous to the building permit issued in the Roanoke case, Eastlake Community Council vs. Roanoke Associates, Inc., 82 Wn.2d 475, 513 P.2d 36 (1973). The Supreme Court has removed any doubt that an environmental impact statement was required before the permit in this case was issued.

III.

The proposed development is an ecologically fragile area which is

1 singularly unsuited for such use and could not be built without harm to
2 wildlife, significant environmental degradation and pollution of the
3 groundwaters underlying this site. There has been no quantitative
4 examination of what will happen as the degenerative properties of
5 adjoining soils are gradually exhausted. As such, the development
6 would be contrary to the policies of the Shoreline Management Act,
7 RCW 90.58.020, and the Departmental Guidelines (WAC 173-16-060(14) and
8 (15)), relating to landfill on wetlands and solid waste disposal.

9 Issuing a substantial development permit under these conditions was
10 clearly erroneous under the provisions of RCW 90.58.140, which requires
11 compliance with the policies of the Act and the Departmental Guidelines.

12 This is not to say there can be no development adjacent to waterways
13 However, the risk in a disposal site such as this is too great to permit
14 its construction when it is not a water-dependent use.

15 For which the Shorelines Hearings Board issues this

16 ORDER

17 On the basis of the foregoing Findings of Fact and Conclusions,
18 It is Hereby Ordered that the decision of Grays Harbor County in granting
19 a substantial development permit to the respondent be reversed.
20
21
22
23
24
25
26

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

DOVE at Lacey, Washington this 1st day of February, 1974.

SHORELINES HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

Robert E. Beaty
ROBERT E. BEATY, Member

Ralph A. Beswick
RALPH A. BESWICK, Member

W. A. GISSBERG, Member
(did not participate)

Robert F. Hintz
ROBERT F. HINTZ, Member

Mary Ellen McCaffree
MARY ELLEN McCAFFREE, Member

FINDINGS OF FACT,
CONCLUSIONS AND ORDER